

W. J. JEWELL

IBLA 83-264

Decided May 7, 1984

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting application for prospecting permit ES 32097.

Affirmed in part, modified and remanded.

1. Mineral Lands: Prospecting Permits

Where a prospecting permit application is submitted in less than the required number of approved forms, a curable defect exists, which under provision of 43 CFR 3511.2-4(b) if cured within 30 days, entitles the application to priority as of the date of the curative filing.

APPEARANCES: W. J. Jewell, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

W. J. Jewell appeals from a decision dated December 15, 1982, of the Eastern States Office, Bureau of Land Management (BLM), rejecting his prospecting application ES 32097. The BLM decision recites two reasons for rejection of the application: That appellant failed to show that he was qualified to hold Federal prospecting permits in compliance with 43 CFR 3502.2 and that he had incorrectly reproduced copies of the prospecting application form in violation of 43 CFR 3511.2-1.

The provisions of 43 CFR 3502.2 deal with citizenship. The regulation provides: "If the applicant is an individual, be [sic]/she shall submit with each application for permit or lease a statement over his/her own signature setting forth the applicant's citizenship." Examination of the application first made by appellant however, indicates that BLM's finding regarding citizenship is incorrect. The printed application, Form 3510-1 (Feb. 1980), submitted by appellant to BLM, contains an item numbered 6a. This item asks the applicant completing the form the question, "Are you a citizen of the United States?" In a blank provided by the form for answer there appears a check mark next to the "yes" answer. Below this portion of the application's questionnaire, applicant has signed "W J Jewell." Under the regulation, nothing more is required. It is apparent the first reason for rejection of this application was without factual basis.

The second reason given for rejection is failure to comply with 43 CFR 3511.2-1. This regulation states, in pertinent part, that "an application must be filed on a form approved by the Director or an exact reproduction thereof." Appellant filed a single original copy of the printed Form 3510-1

together with three photocopies of the front page of the form only. Since the form consists of two sides, printed on the front and back of a single sheet of paper, appellant failed to make an exact reproduction of the form.

Appellant's application is distinguishable from the application discussed by this Board involving a similar situation in UOP, Inc., 31 IBLA 142 (1977). In that case, the applicant had failed to submit a single complete copy of the required form, but had filed seven photocopies which contained only the front side of the form and therefore omitted altogether the reverse side which contained the permit conditions. UOP, Inc., *supra* at 143. Unlike the prospector in UOP, appellant has agreed to be bound by the conditions which the United States attached to the issuance of the permit by filing a single complete form. His only failure is to file the required number of copies of complete forms. In this case, appellant has filed one complete original form and three incomplete photocopies of that form. The regulation requires that a hardrock prospector must file seven complete forms (43 CFR 3511.2-1(c)(1)) and that an application will be rejected if less than five copies are filed (43 CFR 3511.2-4(a)(6)). This defect is, however, curable under 43 CFR 3511.2-4(b) which provides:

(b) Curable defects. If an application is defective to the extent set out in paragraph § 3511.2-4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

Appellant has now filed, with his notice of appeal and statement of reasons, seven complete copies of the prospecting permit form and a copy of his birth certificate. Quite clearly, his application is in proper form to be adjudicated by BLM. The application should be accepted for processing with a filing date effective December 28, 1982, the date the amended application was received by BLM. *See* 43 CFR 3511.2-4(b); UOP, Inc., *supra* at 144. *See also* John R. Snedegar, 79 IBLA 201 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part and remanded for further processing consistent with this decision.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

